

### **REMARKS/ARGUMENTS**

This Response follows the Advisory Action mailed on December 31, 2008. The following remarks address the comments in the Continuation Sheet of the Advisory Action.

All pending claims 18, 32-34, 37 and 39-41 are directed to a method that includes placing a jacket comprising compliant, elastic and *open cell* material around the ventricles of the heart to passively constrain circumferential expansion, and causing an electrical element to extend *through an open cell* in the jacket to operatively engage the heart and to couple electrical energy to the heart. In the Response mailed on November 25, 2008, the applicant responded to the assertion in the October 29, 2008 Office Action that the jacket shown in Figures 4 and 5 of the Lederman patent (6,224,540) is elastic. Specifically, the applicant pointed out that the Lederman patent lacked any teaching that the loop mesh (32) of the jacket described in connection with Figures 4 and 5 of the Lederman patent (e.g., at column 5, lines 35-36) could be elastic.

In the Continuation Sheet, the Advisory Action supported the earlier rejection by relying on yet a different embodiment of the invention shown in the Lederman patent - the girdle shown in Figure 6 and described at column 5 lines 62-67 though column 6, lines 1-4. In particular, the comments in the Continuation Sheet state that the embodiment shown in Figure 6 is elastic.

Unlike the claimed invention, however, the girdle shown and described in connection with Figure 6 of the Lederman patent does not comprise open cell material. It is a "sheet" of material. (Lederman patent, col. 5, line 63). Accordingly, it would not even be possible to cause an electrical element to extend through an open cell to couple electrical energy to the heart. Moreover, these embodiments are described separately. The physiology of the heart and associated treatment methods are complex. There is no suggestion that the different features of these different embodiments can be imputed to the other for purposes of efficacious treatment modalities.

Furthermore, there is no teaching or suggestion in the Lederman patent that either the loop mesh material version described in connection with Figures 4 and 5 or the elastic sheet

material version described in connection with Figure 6 can be advantageously combined with coupled electrical therapy as recited in the claim to treat cardiac disease. Similarly, the Jamshidi patent (5,593,428), which discloses an external defibrillator and pacing system, teaches nothing regarding passive constraint therapy.

Given the complexity of cardiac physiology and associated disease treatment methodologies, it would not have been obvious for a person of ordinary skill in the art to combine the prior art features in the manner asserted in the Advisory Action. The prior art references show these treatment elements and steps in very different and functionally distinct applications. There is no teaching or suggestion as to how or why they could be combined in the manner recited in the claims to achieve an efficacious treatment methodology. The rejection is therefore based on impermissible hindsight. Reconsideration of claims 18, 32-34, 37 and 39-41 and withdrawal of the §103 rejection in view of these comments is requested.

Respectfully submitted,

FAEGRE & BENSON LLP

By: /Walter Linder/  
Walter C. Linder, Reg. No. 31,707  
612/766-8801  
Customer No.: 25764

Dated: March 27, 2009